



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2014-0529; FRL-9915-53-Region 9]

Revisions to the California State Implementation Plan, California
Air Resources Board - Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the California Air Resources Board portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer products. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2014-0529, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947-4122, tong.stanley@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

Table of Contents

I. The State's Submittal.

- A. What rule did the State submit?
- B. Are there other versions of this rule?
- C. What is the purpose of the submitted rule revision?

II. EPA's Evaluation and Action.

- A. How is EPA evaluating the rule?
- B. Does the rule meet the evaluation criteria?
- C. Public comment and final action.

III. Statutory and Executive Order Reviews.

I. The State's Submittal.

A. What rule did the State submit?

Table 1 lists the rule we are approving with the date it was amended by the State and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted California Air Resources Board Rule

Regulation	Amended	Filed with California Secretary of State	Submitted to EPA
Subchapter 8.5 - Consumer Products; Article 2 - Consumer Products	March 15, 2013	April 25, 2013	May 28, 2014

On July 18, 2014, EPA determined that the submittal for California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5 - Consumer Products; Article 2 - Consumer Products met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of CARB's Consumer Products Regulation (amended on August 6, 2010 and submitted to EPA on January 28, 2011), into the SIP on February 13, 2012 (77 FR 7535). CARB's submittal letter advised EPA that its SIP submission did not include the second tier 3% VOC limits for

Multi-purpose Solvents and Paint Thinners. CARB's intent was to monitor manufacturers' progress to meet both the technology forcing lower VOC limit and a less flammable product. In 2013 CARB determined the 3% VOC limit for Multi-purpose Solvents and Paint Thinners was technically feasible and included the limit in a May 28, 2014 SIP submittal.

On September 29, 2011, and March 15, 2013 CARB adopted additional revisions to the SIP-approved version and submitted them to us along with the 3% VOC limit for Multi-purpose Solvents and Paint Thinners on May 28, 2014. Table 2 lists the three amendments. While we can act on only the most recently amended version that was submitted to EPA, we have reviewed materials provided with the SIP submittal and note that it includes and builds on the previous amendments.

Table 2 - California Air Resources Board Submitted Revisions to its Consumer Products Regulation

Board Hearing	Amended ¹	Filed with California Secretary of State	Submitted to EPA
September 24, 2009	August 6, 2010	September 20, 2010	May 28, 2014 (2nd tier - 3% VOC limit for Multi-purpose

¹ Date the Final Rulemaking Package was filed with the California Office of Administrative Law.

			Solvents and Paint Thinners only)
November 18, 2010	September 29, 2011	November 10, 2011	May 28, 2014
October 18, 2012	March 15, 2013	April 25, 2013	May 28, 2014

C. What is the purpose of the submitted rule revision?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The California Health and Safety Code (Section 41712(b)) requires CARB to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products if the state board determines that adequate data exist to establish both of the following:

(1) The regulations are necessary to attain state and federal ambient air quality standards.

(2) The regulations are commercially and technologically feasible and necessary.

CARB's May 28, 2014 submittal contains the following three amendments to its Consumer Products Regulation: 1) the second tier 3% VOC limits for Multi-purpose Solvents and Paint Thinners from CARB's August 6, 2010 amendments (September 24, 2009 Board

Hearing), but excluded from CARB's January 28, 2011 SIP submittal²; 2) CARB's September 29, 2011 amendments (November 18, 2010 Board Hearing), which established new or lower VOC limits for 11 consumer product categories; and 3) CARB's March 15, 2013 amendments (October 18, 2012 Board Hearing), which incorporates additional areas where higher VOC automobile windshield washer fluid could be sold to accommodate mountainous areas that routinely experience freezing temperatures in the winter.

The amendments also: (1) add or modify the definitions for artist's solvent/thinner, oven cleaners, spot removers, and the "Most Restrictive Limit" provision; (2) consolidate existing requirements into a table listing the consumer product categories that prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene. This will make it easier to find the requirements for all consumer product categories where use of these compounds is prohibited; (3) consolidate into a table listing the consumer product categories that prohibit the use of compounds with a global warming potential (GWP) of 150 or greater; (4) consolidate into a table listing the consumer products that prohibit the use of para-dichlorobenzene; (5) add additional test methods to be used to

² Robert D, Fletcher (CARB), letter to Jared Blumenfeld (EPA Region IX), January 28, 2011, submitting the August 6, 2010 amendments to California's Consumer Products Regulation.

determine the aromatic content of Multi-purpose Solvents and Paint Thinners and the VOC content of Fabric Softener-Single Use Drying Product; (6) raise the VOC limit for nonaerosol Oven or Grill Cleaners products to 4% to accommodate the use of noncaustic technologies; (7) delay the effective date until December 31, 2012 for Spot Removers, and until December 31, 2013 for Flying Bug Insecticide (aerosol) and Wasp or Hornet Insecticide (aerosol); and (8) prohibit the use of alkylphenol ethoxylates in certain products to ensure these compounds are not used when reformulating the products.

Generally, CARB received support for its amendments from both the consumer products industry and environmental organizations. Although industry commented about the serious and costly reformulation challenges posed by the amendments, industry was committed to expending the money to conduct the research and development necessary to meet the new requirements. Environmental organizations were also generally supportive of the proactive approach CARB was taking to prohibit the use of certain toxic compounds in order to help protect the health of workers and consumers, and prohibiting the use of compounds with high global warming potential in the reformulation of products to meet lower VOC limits.

CARB estimates that raising the VOC limit for Oven or Grill

Cleaners to 4% will result in an increase of approximately 0.1 tons per day (tpd) and that increasing the number of areas where higher VOC automotive windshield washer fluid could be sold will result in an increase of 0.12 tpd VOC. CARB's staff reports indicate these increases would be offset by approximately 11 tpd of VOC reductions from other consumer product categories. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action.

A. How is EPA evaluating the rule?

CAA section 110(a)(2)(A) requires that regulations submitted to EPA for approval into a SIP must be clear and legally enforceable. CAA section 110(1) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. California's consumer products regulation covers VOC area sources and not stationary sources. In 1998 EPA promulgated a national rule to regulate VOC emissions from consumer products (63 FR 48831, September 11, 1998). EPA's national rule largely parallels an early SIP-approved version of CARB's consumer products regulation. The amendments from CARB that we are approving today regulate nearly three times the number of consumer product

categories and has more stringent VOC limits than categories covered under EPA's 1998 national rule. CARB points out that although emissions from individual consumer products may not seem large, collectively, they represent a significant source of emissions when taking into account 39 million California residents use these products and that given the severity of air pollution in California, "dramatic emission reductions from all sources contributing to ground-level ozone are necessary".³ CARB estimates that ozone pollution damage to crops is estimated to cost agriculture over \$500 million dollars annually.⁴

Guidance and policy documents that we use to evaluate enforceability and SIP requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988, revised January 11, 2000 (the Bluebook).
2. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

³ Initial Statement of Reasons; Proposed Amendments to the California Regulation for Reducing Emissions from Consumer Products; Release Date: September 29, 2010. IV-25.
<http://www.arb.ca.gov/regact/2009/cpmthd310/cpmthdisor.pdf> .

⁴ Ibid. IV-19.

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. 40 CFR 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. CARB estimates that raising the VOC limit for Oven or Grill Cleaners and increasing the mountainous areas where higher VOC windshield washer fluid can be sold will increase VOC emissions by approximately 0.1 and 0.12 tpd respectively, but that these increases are offset by VOC reductions (approximately 11 tpd) from other consumer product categories. We have reviewed CARB's analysis and agree that the emission increases are offset by greater VOC reductions achieved in other consumer product categories and that it will not interfere with attainment, RFP, or any other applicable CAA requirement. Our TSD has more information on our evaluation.

Our action is being taken under CAA Title 1 part D and is limited to the control of criteria pollutants. However, we support CARB's actions to limit toxic or potentially toxic compounds and those compounds with a high global warming

potential.

C. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice

of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 5, 2014.

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraph (c) (444) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(444) New and amended regulations were submitted on May 28, 2014, by the Governor's designee.

(i) *Incorporation by reference.* (A) California Air Resource Board.

(1) "Final Regulation Order, Regulation for Reducing Emissions from Consumer Products," Subchapter 8.5 (Consumer Products), Article 2 (Consumer Products), amended March 15, 2013.

* * * * *

[FR Doc. 2014-24492 Filed 10/16/2014 at 8:45 am; Publication
Date: 10/17/2014]